

AMERICAN ARBITRATION ASSOCIATION

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DUNHILL STAFFING SYSTEMS, INC.

Claimant,

AAA Case No.: 13 181 Y 01674 04

-v-

DUNHILL FRANCHISEE TRUST, et al.,

Respondents.  
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**RESPONDENTS' ANSWERING STATEMENT AND COUNTERCLAIMS**

Respondents, being the members of the Dunhill Franchisee Trust which were named in Claimant's Demand for Arbitration (the "Demand") and are indicated below on Schedule 1, and including any operating entities thereof also indicated on Schedule 1 (if the name of the operating entity is presently unavailable it is indicated as "John Doe, Inc." and the exact name of such entity will be supplied at a later time) by and through their undersigned counsel, provide the following Answering Statement to the Demand with Counterclaims.

**GENERAL DENIAL**

Pursuant to Rule 4(b) of the Commercial Arbitration Rules of the American Arbitration Association, effective July 1, 2003, Respondents deny each claim as it relates to any Respondents as enumerated and designated in Claimant's "Claims Legend" contained in the Demand without waiving, but expressly reserving, all rights any of them may have to seek relief by appropriate motions applicable to the allegations in the Demand.

**UNENFORCEABILITY**

Pursuant to Rule 4(b) of the Commercial Arbitration Rules of the American Arbitration Association, effective July 1, 2003, Respondents contend that Claimant's enumerated categories of claims are unenforceable in accordance with the parties' respective franchise agreements

without waiving, but expressly reserving, all rights any of them may have to seek relief by appropriate motions applicable to the allegations in the Demand.

Pursuant to Rule 4(b), the Respondents file the following defenses and counterclaims, which it incorporates by reference in its Answering Statement.

**Defenses Legend:**

- (A) Breach of contract
- (B) Failure of consideration
- (C) Fraud in the inducement to enter into the contract (fraudulent misrepresentations)
- (D) Equitable right of set-off
- (E) Termination of the franchise agreement For Cause
- (F) Termination of the franchise agreement By Right
- (G) Unenforceability of restrictive covenant
- (H) Payment

**Counterclaims Legend:**

- (A) Breach of contract
- (B) Failure of consideration
- (C) Fraud in the inducement to enter into the contract (fraudulent misrepresentations)
- (D) Equitable right of set-off
- (E) Termination of the franchise agreement For Cause
- (F) Termination of the franchise agreement By Right
- (G) Rescission of the franchise agreement

**SCHEDULE 1**

**Dunhill Franchisees:**

Franchisee	Claimant's Claims*	Respondents' Defenses	Respondents' Counterclaims
Harvey Auger (The Auger Group, LLC) P.O. Box 78648 Charlotte, NC 28271-7037	D	A, B, C, D, E, H	A, B, C, D, E, G
Lelia and Jay Babson (Dunhill of Cary, Inc.) 975 Walnut Street Cary, NC 25711-4268	A	A, B, D, E, F, H	A, B, D, E, F, G
Mark Zorof (John Doe, Inc.) P.O. Box 4165 Alpharetta, GA 30023	A, D	A, B, C, D, E, H	A, B, C, D, E, G

Franchisee	Claimant's Claims*	Respondents' Defenses	Respondents' Counterclaims
Marsha Simpkins (John Doe, Inc.) Charleston, WV 25322-0547	A, D, E	A, B, D, E, F, H	A, B, D, E, F, G
Michael Green (L'HAR, Inc.) 4015 Executive Park Drive, #240 Cincinnati, OH 45241-4017	B, C, D	A, B, D, E, G, H	A, B, D, E, G
Jesse Montalvo (John Doe, Inc.) 4455 S. Padre Island Drive, #102 Corpus Christi, TX 78411	A, C, D	A, B, C, D, E, G, H	A, B, C, D, E, G
Basil "Bud" Westover (New Beginnings Staffing, LLC) P.O. Box 24297 Forth Worth, TX 76124	C, D	A, B, C, D, E, G, H	A, B, C, D, E, G
Duke Haynie (John Doe, Inc.) 96 Villa Road Greenville, SC 29615-3052	D	A, B, C, D, E, F, H	A, B, C, D, E, F, G
Michael Lamanna (John Doe, Inc.) 15375 Barranca Parkway, Ste. K-104 Irvine, CA 92618	D, F	A, B, C, D, E, H	A, B, C, D, E, G
John Tierney (John Doe, Inc.) 3732 Mt. Diablo Blvd, #375 Lafayette, CA 94549-3605	A	A, B, D, E, H	A, B, D, E, G

Blaine and Ron Gregory (Hire Force, Inc.) P.O. Box 196893 Winter Springs, FL 32719-6893	A	A, B, D, E, H	A, B, D, E, G
James S. Gunnin (SYZYGY Search, Inc.) P.O.Box 1119 Rockport, TX 78381	D	A, B, C, D, E, H	A, B, C, D, E, G
Curtis Reid (Reid One, Inc.) 7666 East 61 <sup>st</sup> Suite 120 Tulsa, OK 74133	D	A, B, C, D, E, H	A, B, C, D, E, G
Anthony Desiderio (John Doe, Inc.) 49 South Main Street Pittston, PA 18640	A, C	A, B, D, E, G, H	A, B, D, E, G
Anthony and Karen Russo (AEONTG) 46 E. Trenton Avenue Pittston, PA 18640	B, C, D, E	A, B, C, D, E, G, H	A, B, C, D, E, G
Elias Zinn and Michael Wilcoxson (John Doe, Inc.) 11259 SW Freeway Houston, TX 77031	D	A, B, C, D, E, H	A, B, C, D, E, G
Neil Whitman (The Whitman Group, LLC) 1470 Ben Sawyer Blvd, #16 Mt. Pleasant, SC 29464	D	A, B, C, D, E, H	A, B, C, D, E, G
Peter Kramer (John Doe, Inc.) P.O. Box 48884 Tampa, FL 33647	B, C, D	A, B, D, E, F, G, H	A, B, D, E, F, G

Richard Hanson (John Doe, Inc.) 770 East Market Street Suite 185 West Chester, PA 19382	D, E	A, B, D, E, H	A, B, D, E, G
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\* As set forth in Claimant's "Claims Legend" contained in the Demand.

Respondents expressly reserve their rights to add, amend or modify any defenses or counterclaims they may have against Claimant.

Based upon the foregoing, the Respondents seeks an award:

1. Dismissing the claims asserted against them and each of them by Claimant, in their entirety, and in addition, awarding the Respondents the following relief;
2. Granting each of the counterclaims asserted herein by Respondents;
3. For damages, in an amount to be determined at the hearings with respect to this matter (and itemized according to the merits of each Respondent's counterclaim(s)) but collectively, believed to be up to the sum of \$5,000,000.00 (exclusive of interest);
4. A final and binding determination that the Respondents' counsel fees and the costs and expenses of this proceeding be borne by Claimant.

Dated: New York, New York  
September 10, 2004

Respectfully submitted,

Rosen, Einbinder, & Dunn, P.C.

Attorneys for Dunhill Franchisee Trust and each individual Respondent as set forth herein in Schedule 1.

*Richard L. Rosen*

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